

241881



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET N.W.
WASHINGTON, D.C. 20554

847

News media information 202/632-5050. Recorded listing of releases and texts 202/632-0002.

WINDOW NOTICE FOR THE FILING OF FM BROADCAST APPLICATIONS

Report No. CF-12

Released: December 13, 1988

NOTICE is hereby given that applications for vacant FM Broadcast allotment(s) listed below may be submitted for filing during the period beginning on the date of release of this public notice and ending January 18, 1989 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

<u>CHANNEL</u>	<u>CITY</u>	<u>STATE</u>
296A	BELZONI	MISSISSIPPI
294A	NORTON	KANSAS
249A	HUDSON	MICHIGAN
280A	BIG LAKE	TEXAS
274C1	LIBERAL	KANSAS
221A	HOLBROOK	ARIZONA

-F C C-

EXHIBIT B

242215



NEWS

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET, N.W.
WASHINGTON, D.C. 20554

News media information 202 / 632-505C
Recorded filing of releases and texts
202 / 632-3002

892

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC 515 F.2d 385 (D.C. Cir. 1975).

Report No. DC-1304

ACTION IN DOCKET CASE

December 12, 1988

COMMISSION AUTHORIZES LIMITED SHORT-SPACED FM STATIONS
BY USING DIRECTIONAL ANTENNAS
(MM DOCKET 87-121)

The Commission today adopted new rules permitting limited short-spacing

242217

SEPARATE STATEMENT
OF
COMMISSIONER JAMES H. QUELLO

Re: In the Matter of Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignment by Using Directional Antennas.

Consistent with my separate statement to the Notice of Proposed Rulemaking in this proceeding, I must disagree with the majority's decision to authorize short-spaced facilities in the FM band.

The Commission's decision ultimately rests on the concept that we can achieve equivalent contour protection for FM stations. This is precisely the method now employed in the AM band. As the level of interference in the AM band demonstrates, contour protection has not served this Commission well.

I fully recognize that the item does not propose to change the table of allocations today. However, once numerous licensees take advantage of this proposal, you have in effect reallocated much of the existing band. I doubt it will be very long before short-spacing becomes an allotment tool. This proposal goes far beyond present use of short-spaced facilities in the noncommercial FM band.

The site problems confronting radio broadcasters today are very real. Rather than opening the floodgates, I would have preferred to adopt a case-by-case approach where an applicant seeking to short-space its antenna would be required to demonstrate that it has lost its site due to zoning changes, loss of land or other circumstances beyond a broadcaster's control. I believe that this approach properly balances the need for flexibility and respect for the table of allocations.

242219

December 12, 1988

Separate Statement
of
Commissioner Patricia Diaz Dennis

In Re: Amendment of Part 73 of the Commission's Rules to
Permit Short-Spaced FM Station Assignment by Using
Directional Antennas.

I support this decision because it represents a measured response to the problems FM licensees have in finding suitable transmitter sites. Licensees now face four regulatory obstacles in selecting a site: zoning restrictions, air safety regulations, our principal city coverage rule, and our mileage separation rules. This decision relaxes the mileage separation rules and thereby gives licensees more flexibility.

The proposal in this proceeding was far-reaching; today's decision is much more conservative. We have not reduced the protection granted to Class B and B1 stations. We are not using directional antennas as an allotment tool; we will continue to make new allotments only if they fully comply with our mileage separation rules. We are not allowing unlimited short-spacing. Licensees will be required to meet the mileage separations applicable to the next lower class of stations. In addition, we have discouraged casual short-spacing by providing that short-spaced stations, unlike other stations, will receive protection only for their actual facilities.

242220

- 2 -

Directional antennas are hardly a new idea. We have authorized them in the non-commercial FM band with success. We authorize them here in a measured way. This modest change in our rules will not lead to the "AM-ization" of the FM band. Instead, it will give existing licensees more options in choosing sites and ensure the continuation of excellent FM service with little or no additional interference.

EXHIBIT C

245096



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET N.W.
WASHINGTON, D.C. 20554

1245

News media information 202/632-5050. Recorded listing of releases and texts 202/632-0002.

January 13, 1989

WINDOW NOTICE FOR THE FILING OF FM BROADCAST APPLICATIONS

Report No: CF-12A

Released:

ERRATUM

NOTICE is hereby given that the following channel allocations were listed inadvertently on Report No. CF-12 released December 13, 1988 and are hereby deleted.

<u>CHANNEL</u>	<u>CITY</u>	<u>STATE</u>
294A ¹	NORTON	KANSAS
249A ²	HUDSON	MICHIGAN

-F C C-

1 A new window notice is being released for Norton, Kansas announcing a new filing period on Channel 294C1, the correct channel.

2 Due to technical difficulties with this channel it is being deleted from the window notice. However, there is a counter proposal pending in Docket 88-284 that would allocate an additional Class B FM channel to Hudson, Michigan.

6

1/2

F

EXHIBIT D

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

AUG 31 1989

IN REPLY REFER TO:

8920-JR

Lauren A. Colby, Esquire
10 E. Fourth Street
P.O. Box 113
Frederick, MD 21701

In re: Application for Construction Permit
Hudson, Michigan
File No. BPH-890118MD
Petition for Reconsideration

Dear Mr. Colby:

This concerns the Petition for Reconsideration filed January 18, 1989 by your client, John M. Salov ("Salov"). Salov seeks (1) reconsideration of the January 13, 1989 action by Public Notice deleting the window for FM Channel 249A, Hudson, Michigan, and (2) acceptance of his application for construction permit for that channel.

Salov's application was submitted in response to the December 13, 1988 Public Notice of a window for filing for a vacant Channel 249A. According to Salov, although no fully spaced sites were available, Commission action in MM Docket No. 87-121, announced December 12, 1988,¹ provided for short-spaced facilities using directional antennas to protect other stations. Salov asserts that in light of the January 13, 1989 filing deadline, and since the text of the Report and Order in Docket 87-121 had not yet been released, he submitted his application anticipating that he would amend as soon as possible to meet the newly announced directional antenna standards. He further asserts that his application was prepared and ready for filing on January 16, 1989, the day before the filing deadline,² at which time he received a copy of the January 13, 1989 notice deleting the Channel 249A window because of "technical difficulties."

Salov argues that the "technical difficulties" are not insuperable. Conceding that new allotments would not be based on the possibility of utilizing directional antennas, he notes that Channel 249A had been allotted to Hudson "for some time." Salov argues that the action deleting Channel 249A was done with "undue haste," particularly since resources had been expended preparing applications. Finally, Salov argues that cancellation of the window

¹ Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas, 4 FCC Rcd 1681 (1989).

² January 17 was the first business day following January 13, 1989.

one business day prior to the filing deadline was arbitrary and capricious, particularly in this instance when a new service was viable.

Salov correctly notes that a construction permit for Channel 249A had been previously granted.³ However, the permittee never constructed pursuant to its authorization, and the permit lapsed.⁴ Subsequently, minor modifications were made to facilities elsewhere, giving rise to the short-spacing to the vacant Hudson allotment.⁵ The resultant short-spacing situation was not noticed at the time the Channel 249A window was opened on December 13, 1988. This "technical difficulty" was later discovered, leading to action deleting the window as set forth in the January 13, 1989 Public Notice. In light of these occurrences, it cannot be said that the deletion was undertaken with "undue haste." Notably, and in the alternative, Salov does not maintain that the Mass Media Bureau, with knowledge of the short-spacing situation, unreasonably delayed the deletion, thereby allowing parties to fruitlessly devote resources in preparation of applications. That the action deleting the channel was close in time to the filing deadline is unfortunate. However, the sequence of events does not indicate how the actions complained of were either arbitrary or capricious. Rather, it appears that the Bureau acted in a timely and appropriate manner.

Applicability of the directional antenna provisions adopted in the context of Docket 87-121 is not at issue here. The Commission therein provided applicants and licensees flexibility in the selection of transmitter sites. Here, the deletion of Channel 249A means that Salov no longer can apply for that frequency and, by definition, is currently neither an applicant nor a licensee entitled to benefit from the new directional antenna rules.

Finally, as set forth in the January 13, 1989 Public Notice at note 2, pending action in MM Docket No. 88-284 may provide an alternative to Channel 249A at Hudson. Should another channel or channels be allotted to that community, Salov and any other interested party may submit applications at that time within the window period.

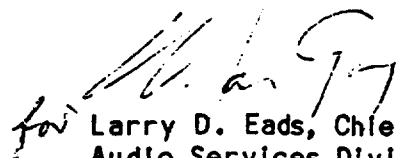
³ A construction permit was initially granted to CCM, Inc. on May 16, 1984.

⁴ On December 22, 1987, the application for a replacement permit filed by Metro Program Network, Inc. was denied and the permit and call letters forfeited.

⁵ Channel 249A is short spaced to the licensed site of Station WDFM(FM), Defiance, Ohio.

In light of the above, the Petition for Reconsideration submitted by John M. Salov IS DENIED. This action is taken pursuant to 47 C.F.R. Section 0.283.

Sincerely,


for Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

ATTACHMENT 3

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

MAIN REPLY REFER TO:

8920-JR

Lauren A. Colby, Esquire
10 E. Fourth Street
P.O. Box 113
Frederick, MD 21701

Sent By
Mailed By

In re: Application for Construction Permit
Hudson, Michigan
File No. BPH-890118MD
Petition for Reconsideration

Dear Mr. Colby:

This concerns the Petition for Reconsideration filed January 18, 1989 by your client, John M. Salov ("Salov"). Salov seeks (1) reconsideration of the January 13, 1989 action by Public Notice deleting the window for FM Channel 249A, Hudson, Michigan, and (2) acceptance of his application for construction permit for that channel.

Salov's application was submitted in response to the December 13, 1988 Public Notice of a window for filing for a vacant Channel 249A. According to Salov, although no fully spaced sites were available, Commission action in MM Docket No. 87-121, announced December 12, 1988,¹ provided for short-spaced facilities using directional antennas to protect other stations. Salov asserts that in light of the January 13, 1989 filing deadline, and since the text of the Report and Order in Docket 87-121 had not yet been released, he submitted his application anticipating that he would amend as soon as possible to meet the newly announced directional antenna standards. He further asserts that his application was prepared and ready for filing on January 16, 1989, the day before the filing deadline,² at which time he received a copy of the January 13, 1989 notice deleting the Channel 249A window because of "technical difficulties."

Salov argues that the "technical difficulties" are not insuperable. Conceding that new allotments would not be based on the possibility of utilizing directional antennas, he notes that Channel 249A had been allotted to Hudson "for some time." Salov argues that the action deleting Channel 249A was done with "undue haste," particularly since resources had been expended preparing applications. Finally, Salov argues that cancellation of the window

1 Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas, 4 FCC Rcd 1681 (1989).

2 January 17 was the first business day following January 13, 1989.

one business day prior to the filing deadline was arbitrary and capricious, particularly in this instance when a new service was viable.

Salov correctly notes that a construction permit for Channel 249A had been previously granted.³ However, the permittee never constructed pursuant to its authorization, and the permit lapsed.⁴ Subsequently, minor modifications were made to facilities elsewhere, giving rise to the short-spacing to the vacant Hudson allotment.⁵ The resultant short-spacing situation was not noticed at the time the Channel 249A window was opened on December 13, 1988. This "technical difficulty" was later discovered, leading to action deleting the window as set forth in the January 13, 1989 Public Notice. In light of these occurrences, it cannot be said that the deletion was undertaken with "undue haste." Notably, and in the alternative, Salov does not maintain that the Mass Media Bureau, with knowledge of the short-spacing situation, unreasonably delayed the deletion, thereby allowing parties to fruitlessly devote resources in preparation of applications. That the action deleting the channel was close in time to the filing deadline is unfortunate. However, the sequence of events does not indicate how the actions complained of were either arbitrary or capricious. Rather, it appears that the Bureau acted in a timely and appropriate manner.

Applicability of the directional antenna provisions adopted in the context of Docket 87-121 is not at issue here. The Commission therein provided applicants and licensees flexibility in the selection of transmitter sites. Here, the deletion of Channel 249A means that Salov no longer can apply for that frequency and, by definition, is currently neither an applicant nor a licensee entitled to benefit from the new directional antenna rules.

Finally, as set forth in the January 13, 1989 Public Notice at note 2, pending action in MM Docket No. 88-284 may provide an alternative to Channel 249A at Hudson. Should another channel or channels be allotted to that community, Salov and any other interested party may submit applications at that time within the window period.

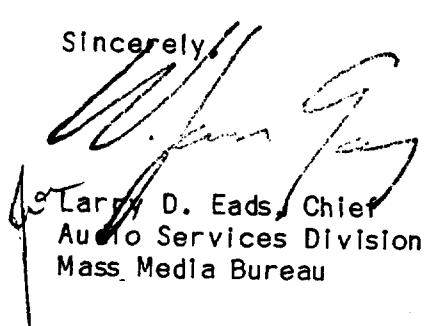
3 A construction permit was initially granted to CCM, Inc. on May 16, 1984.

4 On December 22, 1987, the application for a replacement permit filed by Metro Program Network, Inc. was denied and the permit and call letters forfeited.

5 Channel 249A is short spaced to the licensed site of Station WDFM(FM), Defiance, Ohio.

In light of the above, the Petition for Reconsideration submitted by John M. Salov IS DENIED. This action is taken pursuant to 47 C.F.R. Section 0.283.

Sincerely,



Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

bcc: Karl A. Kensinger

ATTACHMENT 4

Statement A

ALLOCATION CONSIDERATIONS

prepared for
Lakeside Broadcasting Corporation
Vergennes, Vermont

Ch 244A (96.7 MHz) 3.4 kW (H&V) 131 m

The Vergennes, Vermont allotment was proposed prior to October 2, 1989. Therefore, with respect to domestic facilities, the allotment is considered to be a 6 kilowatt class A allotment, except with respect to stations WDOT, Warren, Vermont and WLTN, Littleton, NH towards which the allotment may be considered as a 3 kilowatt class A facility.

The site proposed for use by Lakeside, however, meets the required distance separations of Section 73.207 toward all U.S. stations, except WLTN. Towards WLTN, the site meets the distance separation requirements of Section 73.213(c) as a 3 kilowatt equivalent facility.

Lakeside is proposing to operate with facilities equivalent to 3 kilowatts at 100 meters towards WLTN, and 6 kilowatts at 100 meters in all other directions. A directional antenna will be employed to satisfy these criteria. Figure 4A and Table 1 describe the proposed directional antenna envelope pattern. The exact antenna design and manufacturer have not been selected; the horizontally polarized and vertically polarized radiation components will not exceed the envelope pattern of Figure 4A. The directional antenna will be mounted in the manner specified by the manufacturer; any top mounted platform on this tower will not exceed the cross sectional area of the tower. No other antennas are contemplated for this tower. Any antennas installed in the future will be separated by no less than the minimum distance specified by the manufacturer of the proposed FM antenna.

The allotment, and Lakeside's proposed site, do not meet the minimum distance' separation requirements (as a class B1 allotment) towards Canadian station CKOI-FM, Verdun, QU. From discussions with Commission Staff, it was determined that the Vergennes allotment was accepted by Canada as a specially negotiated class B1 allotment.

Therefore, it is believed that the allotment is satisfactory for use as a 6 kilowatt class A facility. Accordingly, the maximum power/height combination proposed by Lakeside is equivalent to 6 kilowatts at 100 meters. In addition, for the 3.4 kilowatt power level proposed at effective antenna height of 131 meters, the 34 dBu interfering contour towards Canada will extend no further than would a 25 kilowatt/100 meter (maximum class B1) facility located at the allotment reference point. Figure 4 is a map showing the hypothetical 25 kilowatt/100 meter 34 dBu (class B1) contour from the reference point as compared to the 3.4 kilowatt, 131 meter 34 dBu contour proposed by Lakeside.

It is believed that this proposal, therefore, meets all applicable distance separation and interference protection requirements towards both domestic and Canadian facilities. In the event that the Commission determines that this proposal does not meet the terms of the specially negotiated short-spacing at equivalent power to 6 kilowatts towards the Canadian stations, it is hereby respectfully requested that the proposal be submitted to Canada for concurrence.

CERTIFICATE OF SERVICE

I, Dan J. Alpert, hereby certify that the foregoing document was sent via First Class mail on February 12, 1993 to the following persons:

Stephen T. Yelverton, Esq.
McNair Law Firm, P.A.
1155 Fifteenth St., N.W.
Suite 400
Washington, DC 20005

